

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IMRAN KHAN, et al.,

*Plaintiffs,*

v.

No. 7:20-cv-07561

BOARD OF DIRECTORS OF PENTEGRA  
DEFINED CONTRIBUTION PLAN, et al,

*Defendants.*

**STIPULATED ORDER AND LIMITED AMENDMENT WITHDRAWING COUNT III  
TO THE AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, per this Court’s instructions (Dkt. 191 at 4, n.2), and with the consent of Defendants, Plaintiffs amend their Amended Consolidated Class Action Complaint (Dkt.92) (“ACC”) by withdrawing their third claim for relief (*i.e.*, Count III).

In their opening brief in support of class certification, Plaintiffs informed the Court of their intent to withdraw their third claim for relief in the ACC given that “fact discovery has shown that the PSI-charged asset-based fees at issue in Count III are fully encompassed in Count I.” Dkt. 171 at 8, n. 7. On September 26, 2023, this Court directed the parties to “prepare and file an Order and Stipulation withdrawing that claim [the third claim for relief or Count III] for relief.” Dkt. 191 at 4, n.2. The parties stipulate and agree that relief under Rule 15 is the proper procedure in which a claim or count is to be withdrawn given that Rule 41(a) of the Federal Rules of Civil Procedure only allows for the dismissal of “an action,” not a single claim. Fed.R.Civ.P. 41(a)(1)(A) (“plaintiff may dismiss an action”).

**THEREFORE, THE PARTIES STIPULATE AND AGREE AS FOLLOWS:**

1. Paragraphs 43 and 44, 104 through 111 (including the section header “Defendants breached their fiduciary duties by causing the Plan to invest in higher-cost shares of the Plan’s investments”), and 143 through 149 (Count III) of the ACC are withdrawn;
2. The clause “and investment management fees” in Paragraph 5 is withdrawn; and,
3. All other allegations and claims in the ACC remain.

DATED this 10<sup>th</sup> day of October, 2023.

SO ORDERED:



Philip M. Halpern, U.S.D.J.